

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

FILED

DISTRICT COURT OF GUAM

MAY - 1 2006 *RSM*

Joseph Quenga
Movant,

MARY L.M. MORAN
CLERK OF COURT

v.

* CR/00-00134

* Civil No:05-00024

United States

* * * * *

APPLICATION FOR A CERTIFICATE OF APPEALABILITY

Comes now the movant Joseph Quenga pro se applies to this court for the issuance of a Certificate of appealability. See 28 U.S.C. 2253 (c); Fed. R. App. P. 22(b). Movant is seeking a certificate of appealability so that he may appeal the final order and judgement of the district court denying his petition pursuant to 28 U.S.C. 1651 All Writs Act 28 U.S.C. §2255, extraordinary writs of error coram nobis/ audita querela; 28 U.S.C. §2241.

Movant has made a substantial showing of the denial of a constitutional right and is entitled to a certificate of appealability.

BACKGROUND

On July 26, 2005 movant filed his petition for post-conviction relief, challenging his criminal proceedings in case no:00-00134/civil no:05-00024. Movant raised the following grounds for relief (1) his sentence was unconstitutionally enhanced in light of Booker, 543 U.S. 220, 125 S. Ct. 738 (2005), and that counsel was ineffective for failing to raise the issue before trial and on appeal.

(2) he was denied effective assistance of counsel on direct appeal. (3); that his sentence is in violation of the sixth amendment confrontation clause, and pursuant to the Supreme Courts ruling in Crawford v. Washington, the movant raised his last claim (3) in a motion to amend the district court never addressed his sixth amendment confrontation clause claim, but only denied the motion to amend.

Argument for issuance of a certificate of appealability.
Standard for the Issuance of a certificate of appealability.

Title 28 U.S.C. §2253 (c) requires that before an appeal can be taken from the denial of a §2255 motion a circuit justice or judge must issue a certificate of appealability. Fed. R. App. P. 22(b). clarifies this process and states that upon the filing of a notice of appeal, the district judge who rendered the judgement must either issue a certificate of appealability or state why a certificate shall not issue.

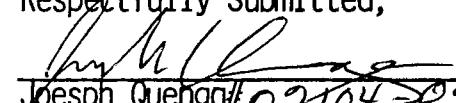
If the district judge denies the certificate the applicant may request one to issue from a circuit judge. To be issued a certificate of appealability the applicant must make a substantial showing of the denial of a constitutional right.. See Valerio v. Crawford, 306 F. 3d. 742 (9th Cir. 2002).A substantial showing is a showing that issues are debatable among jurists a court could resolve the issues differently or the issues deserve further proceedings.

Statdard as applied to movnt's multi-jurisdictional petition grounds for relief.

In the case at hand, the district court did not determine whether or not movants sentence was in violation of his sixth amendment confrontation clause in violation of movants constitutional rights. Because movant has made a substantial showing of a constitutional right and that issues are debatable among reasonable jurists, a court could resolve the issues differently, and the issues deserve further proceedings this court should grant a certificate of appealability.

Wherefore these reasons movant prays this most Honorable court grant a certificate of appealability.

Respectfully Submitted,


Joseph Quengaff 02104-093
Federal Correctional Institution
1900 Simler Avenue
Big Spring Texas 79720

CERTIFICATE OF SERVICE

I hereby Certify and declare that a true and accurate copy of the foregoing certificate of appealability was mailed first class mail on this 22nd day of April 2006, to the following parties below:

Karon V. Johnson
Assistant U.S. Attorney
Suite 500, Sirena Plaza
108 Herman Cortez Avenue
Agana Guam 96910